

SHRI Y.R. RAO, I.R.S.
Asst. Commissioner of Wealth-tax
Central Circle-I, Hyderabad.
WEALTH - TAX DEPARTMENT

District.

G. I. R. No.

Dt. 25-01-1989

- | | |
|--|--|
| 1. Year of assessment | 1985-86 |
| 2. Name of assessee (with complete address) | Sri Satishchandra Modi,
1-10-72/2/3, Begumpet,
Hyderabad. |
| 3. Status :-
<u>Individual-citizen/Not a citizen of India</u>
<u>Hindu Undivided Family.</u>
Company | HUF (Main) consisting of Sri
Satishchandra Modi his wife and
two sons Mr. Sourabh & Mr. Soham
(SPECIFIED HUF) |
| 4. Whether :-
<u>Resident and ordinarily resident.</u>
<u>Resident but not ordinarily resident</u>
Non-resident | Resident |
| 5. Valuation Date | 31-03-1985 |
| 6. Section and sub-section under which the
assessment is made | 16(3) |

ASSESSMENT ORDER

The assessee HUF consists of Sri Satishchandra Modi his wife Smt. Tarulatha Modi and his 2 sons Mr. Sourabh and Mr. Soham. The assessee filed the wealth tax return disclosing negative wealth of Rs. (-) 25,700/-. In response to posting notice u/s.16(2), the assessee's A.R. Sri Anil Kumar Vithlani, C.A. attended and explained the return.

2. In the preceding assessment years, since the partial partition was not accepted by the Department as claimed u/s. 171 of the I.T. Act, both the incomes of the smaller HUFs viz., Sri Satishchandra Modi with his wife and son Soham and Sri Satishchandra Modi with his wife and son Mr. Sourabh are clubbed in the hands of Sri Satishchandra Modi (Main HUF) both for Income-tax and Wealth-tax purposes. In this very same case in earlier years, the net wealth of the minor HUFs viz., Sri Satishchandra Modi with his wife and son Mr. Sourabh

p.t.o.

and Sri Satishchandra Modi with his wife and son Mr. Soham was clubbed with the net wealth of this Main HUF. For the very same reasons, the net wealth of the above 2 minor HUFs is clubbed in this Main HUF and assessment completed u/s.16(3) as under:-

Deficit Wealth returned	(-)	Rs. 25,700
Add: Net wealth assessed in the case of minor HUF viz., Sri Satishchandra Modi with his wife and son Mr. Sourabh (HV-0039)	(+)	Rs. 88,100
Add: Net wealth assessed in the case of minor HUF viz., Sri Satishchandra Modi with his wife and son Mr. Soham (HT-0040)	(+)	Rs. 18,700

NET WEALTH ..	(+)	Rs. 81,100

'DECLARED N.A. FOR 1985-86'

SD/- (Y.R.RAO)
Asst. Commissioner of Wealth-tax
Central Circle-I, Hyderabad.

Copy to the assessee.

3/2/86 -/true copy/-

BEFORE THE COMMISSIONER OF WEALTH-TAX (APPEALS)-III, HYDERABAD

Sri Satishchandra Modi
Main HUF,
5-4-187, Karbala Maidan,
Secunderabad.

APPELLANT

Assessment Year

1985-86

Order appealed against

Order made u/s.16(3)

. . .

BRIEF FACTS OF THE CASE

The appellant an Hindu Undivided Family consisting of Satish Modi his wife and Children filed return of Wealth of Rs. (-) 25,700/-. The Wealth Tax Officer by his order dated 25-01-89 completed the assessment u/s.16(3) determining total wealth of Rs.81,100/-. While so determining total wealth of Rs.81,100/-, he has made the following additions which are disputed in appeal.

Two partitions were effected. One in 1976 and another in 1978. Application u/s.171 were filed. Wealth-tax assessments since then have been made on the balance of Wealth after giving effect to the amounts distributed in partition in this assessment.

GROUND OF APPEAL

1. The order of Wealth-tax Officer in so far as it is against the appellant in contrary to law and facts of the case.
2. The Wealth-tax Officer has failed to appreciate the facts in assessing the wealth of a separate HUF in the hands of appellant HUF.
3. The wealth-tax Officer has erred on facts and law in bringing to tax (Wealth) of Rs. 18,700/- on an estimate basis as belonging to Sri Satish Modi his wife and minor son Soham.
4. The Wealth-tax Officer has erred on facts and law in bringing to tax (Wealth) of Rs.88,100/- on an estimate basis as belonging to Sri Satish Modi his wife and minor son Sourabh.
5. Any other ground or grounds of appeal that may be submitted at the time of hearing.

APPELLANT.

IN THE OFFICE OF THE
COMMISSIONER OF INCOME-TAX
KARNATAKA(CENTRAL):BANGALORE

SHRI V.H. GANGAL
Commissioner of Income-tax
Karnataka(Central):Bangalore

No.RP.72&73/264/85-86/CIT(C)
No.RP.26&27/264/86-87/CIT(C)

in Karnataka
SF
Pl. file
in
Main HUF

NAME AND ADDRESS OF THE ASSESSEE	Shri Satishchandra Modi (HUF with wife & children) 5-4-187/3 & 4, Karbala Maidan Secunderabad
ASSESSMENT YEARS	1979-80; 1981-82; 1984-85; 1985-86.
DATES OF DECISIONS	12.02.1980 and 30.03.1987
DATE OF ORDER	March 30, 1987
PRESENT FOR THE ASSESSEE	Shri A.B.Vithalani Chartered Accountant

REVISION ORDER UNDER SECTION 264(1) OF THE
INCOME-TAX ACT, 1961

As common contentions are involved, the revision petitions filed by the assessee for the above-mentioned assessment years are disposed of by this common order.

2) The assessee has filed revision petitions for these assessment years against the orders u/s 171(2) of the ITO not allowing the claim of partial partition. The petitions are within time. Necessary fees are paid.

3) The assessee-HUF consists of Shri Satishchandra Modi, his wife Smt. Parulata and two minor sons Shri Soham and Shri Saurab. The HUF is being assessed to tax from the assessment year 1971-72. It is a partner in several firms in addition to have other sources of income. There were several partial partitions effected in the family of which the ones made on 31.12.1973 relating to cash of Rs.42,000; on 16.6.1978 relating to cash of Rs.75,000; and on 11.10.1977 relating to cash of Rs.63,000 were accepted by the ITO in his orders u/s 171(2) of the Act. The other partial partitions were, however, not accepted. These were: firstly, the claim of partial partition on 19.1.1976 wherein an amount of Rs.30,000 was claimed to have been divided between Shri Soham, a minor son, to whom cash of Rs.10,000 was given on the one hand and the remaining three person Shri Satishchandra Modi, his wife and Shri Saurab, the other minor, jointly taking Rs.20,000 on the other hand. The assessee claimed at this stage that the group of ~~persons~~ three persons constituted a ^{smaller} ~~other~~ HUF in respect of this cash of Rs.20,000. Records do not show that an order was made by

the ITO accepting this claim. In the office note, however, he has specifically stated that the HUF continued as before in respect of the amount of Rs.20,000. Secondly, another partial partition on 16.10.1978 was made relating to cash of Rs.30,000 which is claimed to have been divided between the minor son Shri Saurab to whom cash of Rs.10,000 was given on ~~xxx~~ the one hand and the remaining three persons viz. Shri Satishchandra Modi, his wife and minor son Shri Soham getting Rs.20,000 on the other hand. The assessee again claimed that the three persons viz. Shri Satishchandra Modi, his wife and minor son Shri Soham constituted a separate smaller HUF in respect of the amount of Rs.20,000 received on partial partition. X Returns were filed for the assessment years 1979-80 onwards showing three separate HUFs, the main HUF and two smaller HUFs. For the assessment year 1979-80, the ITO rejected the claim of partial partition claimed to have been made on 16.10.1978. The ITO held that there could not be a valid partition between minor Shri Saurab on the one hand and the other three persons consisting of a smaller HUF on the other hand. Hence, he rejected the claim. The present revision petition for the assessment year 1979-80 is filed against this order. The ITO continued to hold to this position for the assessment years 1981-82, 1984-85 and 1985-86. The other three petitions are filed against the ITO's refusal to accept this partition. The ITO further held that the income earned ^{by} ~~for~~ the allegedly smaller HUFs was also includible in the assessment of the bigger HUF. In the revision petitions, the assessee has claimed this consequential relief that the income of the smaller HUFs should not be clubbed in the hands of the main HUF.

At the time of hearing, the assessee's representative argued that the partial partition was validly made and should have been accepted by the ITO both in respect of Shri Saurab on 16.10.1978 and in respect of Shri Soham on 19.1.1976. He thus urged that there were three assessable units ~~for~~ being firstly the main HUF consisting of Shri Satischandra Modi, his wife and two minor sons; the second smaller HUF of Shri S.Modi, his wife and minor Shri Saurabh; and the third smaller HUF consisting of Shri S.Modi, his wife and Shri Soham. The income earned by the three separate units should be assessed separately as the partial partitions

were valid. He referred to the definition of partial partition in s.171 - explanation (b) where 'partial partition' means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both. In this connection, he referred to the commentary of Chaturvedi & Pithisaria at pages 3360, 3361 and 3362. He also referred to the decisions of the Supreme Court in the case of Apoorva Shantilal Shah (141 ITR 558), Kallomal (133 ITR 690, Allahabad High Court decision in Babulal Jeevanram (141 ITR 156), Madras High Court decision in Manickam (127 ITR 498). He particularly referred to the decision of the Gujarat High Court in Vimal Bhai's case (140 ITR 29) wherein the facts were said to be identical to the assessee's case. It was further stated that in such partition where the shares were given to individual persons or jointly to a group was immaterial. As per the Gujarat High Court decision in Shantilal Jhalabhai's case (105 ITR 725) which was relied upon in Vimal Bhai's case, it was urged that there could be as many HUFs as units of assessment. The ITO was, therefore, not justified in not recognising the partial partition and clubbing the income of the separate units into the main HUF. Necessary relief should be allowed by revising the assessments for these years.

5) DECISION

The contention of the assessee is not acceptable. It is not (repeat 'not') the assessee's case that on 19.1.1976 minor Shri Soham went out taking an amount of Rs.10,000. Similarly, it is not the assessee's case that on 16.10.1978 minor son Shri Saurab was given Rs.10,000 in a partial partition out of the HUF funds. The assessee's case is that on these two dates there were partial partitions of the HUF as a result of which two separate smaller HUFs were carved out by excluding one minor son respectively. The assessee's case is that cash of Rs.30,000 was divided between minor son on the one hand and the smaller HUF of the remaining persons on the other hand on both these occasions. This claim is required to be considered as ^{to} its validity. This position is not acceptable as valid in law. There cannot be multiple HUFs created by making partial partitions as contended by the assessee. The reliance by the assessee on the various court decisions is not helpful to it for the reasons discussed below.

5.1) Kalloomal's case:

The Supreme Court in the Kalloomal's case (133 ITR 690) has at page 706 extensively discussed what is meant by partial partition. It has given four examples to cover all combinations of partial partitions. It refers specifically to the third kind of partial partition which is relevant for our purpose. The Supreme Court says that the third kind of partition may be a partition where any one of the three branches in the example given by it viz. branch of B or the branch of C or the branch of D separates from the rest of the family taking its share thus resulting in two undivided families - one family which has gone out of the family and the other consisting of the remaining members. In these cases, the partition can be called partial both as regards persons and as regards properties. It should be noted that the Supreme Court has emphasised that the remaining members in such a situation, when one family goes out of the bigger family, the other family consists of the remaining members. The continuity of the bigger HUF is emphasised. Similarly in the decision of the Supreme Court in 163 ITR 31 in the case of N.S. Deshmukh, the Supreme Court after discussing the decision in Gurupad (129 ITR 440) has specifically stated at page 38 that Gurupad's decision cannot be an authority for the proposition that a female member who inherits an interest in the joint family property u/s 6 of the Hindu Succession Act on the death of a co-parcener ceases to be a member of the family on the death of the male member whose interest in the family devolves on her without her volition to separate herself from the family. Here also, the Supreme Court emphasised the continuity of the bigger HUF from which one member, either male or female, would ~~not~~ go out in the special circumstances of section 6 of the Hindu Succession Act.

5.2) The assessee's claim of multiple HUFs cannot be accepted. The case of Vimal Bhai (140 ITR 29) referred to by the assessee relies on another Gujarat High Court decision in Shantikumar Jaghabai's case (105 ITR 795). It is doubtful, however, whether the decision in Shantikumar Jaghabai lays down the correct law. This is because that decision appears to be impliedly overruled by the Supreme Court in its decision in the case of Gurupad Magdum (129 ITR 440). In Shantikumar Jaghabai's decision, while following another decision in Kantilal Manilal (90 ITR 289) the High Court has observed as under:

"We may mention that this judgment in Commissioner of Wealth-tax v. Kantilal Manilal has also noted that four ~~other~~ other High Courts, namely, Calcutta High Court, Bombay High Court, Mysore High Court and Kerala High Court had also taken a view similar to the view taken by the Division Bench in Kantilal Manilal's case regarding their interpretation of section 6 of the Hindu Succession Act. We may mention that a Division Bench of the Bombay High Court in Rangubai v. Laxman Lalji Patil has taken a somewhat different view. According to that Division Bench consisting of Patel and Bal JJ., under section 6 of the Hindu Succession Act, when the interest of the deceased coparcener is to be determined, the court should first determine what is the property available for partition, then partition the coparcenary property setting aside the share of the widow to which she is entitled in her own right and divide the share of the deceased coparcener amongst the heirs, and by the decree make proper provision for their maintenance and marriage expenses of the daughters and award the widow her due share in the coparcenary property and divide the property of her husband amongst the heirs..... However, we respectfully agree with the conclusion reached by our High Court in Kantilal Manilal's case..."

The Supreme Court in Gurupad's case has in term approved the Bombay High Court decision in Rangubai's case (AIR 1966 Bombay 169). At page 448 (129 ITR 440), the Supreme Court has observed as under:

"We are happy to find that the view which we have taken above has also been taken by the Bombay High Court in Rangubai v. Laxman Lalji Patil, AIR 1966 Bom 169, in which Patel J., very fairly, pronounced his own earlier judgment to the contrary in Shiramabai v. Kalgonda Bhingonda..... as incorrect."

The decision of the Gujarat High Court in not following Rangubai's decision and impliedly approving multiple HUFs is, therefore, doubtful for acceptance. The assessee's contention on the validity of multiple HUFs cannot, therefore, be accepted. As stated, it is not the case of the assessee that the minor sons Shri Soham and Shri Saurab took Rs.10,000 each out of the HUF funds and there was partial partition in respect of these ~~the~~ amounts between the main HUF on the one hand and minor sons Shri Soham and Shri Saurab separately on the other hand. If this were the assessee's position, then his case of multiple HUF would not have arisen or survived. In revision, the case made out by the assessee of multiple HUFs and which is rejected by the ITO, cannot be modified. As the claim of multiple HUFs made by the assessee is not acceptable, the same is hereby rejected. The ITO was justified in rejecting this claim and in further clubbing the income of the allegedly smaller HUFs in the income of the main HUF consisting of the assessee, his wife and two minor sons. The revision petitions are, therefore, rejected.

6) For the assessment year 1981-82, the assessee has made an alternative plea that if the partial partition was not accepted for the assessment year 1979-80, the same should be accepted for the assessment year 1981-82 separately. This claim is also not acceptable. There is no separate material to come to the conclusion that the claim of partial partition was acceptable for the assessment year 1981-82. The position in law and on facts in respect of this claim remains the same as in earlier years. Therefore, on merits the claim is not accepted for the assessment year 1981-82 also. Even otherwise, because of the amendment with effect from 1.4.1980 in s.171, the partial partition of HUF is not to be recognised after 31.12.1979. The ITO was, therefore, justified in including the income of the allegedly smaller HUFs in the hands of the bigger HUF for the assessment years 1979-80, 1981-82, 1984-85 and 1985-86.

7) The revision petitions are rejected for the reasons discussed above.

V. H. Ganjal
(V.H. GANJAL) 30/3/82
Commissioner of Income-tax
Karnataka (Central) Bangalore

Copy to the assessee.

Copy to the ITO, Central Circle-I, Hyderabad.

Copy to the IAC, Central Range, Hyderabad.

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STON...
 of 100 (one hundred) ...
 ...

GIR-8-201

विश्व
 District: ...

1. कर निर्धारण वर्ष
 Year of Assessment
2. निर्धारित का नाम (पूरा पता सहित)
 Name of Assessee (with complete address)
3. हैसियत*
 Status*
4. क्या—निवासी परन्तु साधारणतः निवासी
 ननिवासी
 Whether—Resident but not ordinarily resident
 Non-resident
5. लेखा-विधि
 Method of accounting
6. लेखा अवधि (आव स्रोत के लिए जो समय दिया)
 Accounting period (to be shown separately for
 source of income)
7. किस धारा और उप-धारा के अधीन कर निर्धारण किया गया
 Section and Sub-section under which the assess-
 ment is made.

कर निर्धारण आदेश
 (ASSESSMENT ORDER)

The assessee-HUF is a partner in S/A. ... with 25% share. The assessee filed the return ... of Rs. 29,980/-. Sri A. M. Kumar Visiani, C.A. appeared before the Commissioner and explained the return. For the reasons mentioned in the earlier order, the income of the assessee HUF is Rs. 29,980/- and the HUF with himself, wife and son ... is Rs. 143 (3).

यह व्यक्ति, अविभक्त हिन्दु परिवार, कम्पनी, स्थानीय प्राधिकार, रजिस्ट्रीकृत नॉन-प्रतिभागी या अन्य कोई व्यक्ति
 other individual, Hindu undivided family, company, local authority, registered or unregistered firm, association of persons or individuals.

एक-115-4 आई टी/79-79-वास्तविक-(सी-112)-10-1-50-88,00,000
 -115-11/79-79-GITC-(C. 112)-19-1-50-88,00,000

P.T.O.

Income from Business :-

25% share of loss from the firm of M/s. [Name] Industries adopted provisionally subject to revision u/s 155 of [Section] assessment. **Rs. 21,019**

Income from [Source] **Rs. [Amount]**

Net interest received, [Source] **Rs. 2,707**

Rs. 23,726

ADD : Net loss claimed in the case of Sri Satishchandra [Name] - [Section] wife and son Sri [Name] is claimed. **Rs. 34,262**

ADD : Net loss computed in the case of Sri Satishchandra [Name], [Section] with wife and son Sri [Name] is claimed (S.I. 8-200) **Rs. 87,203**

Rs. 1,49,697

'Declared N.A.'

Adv. tax paid ... **Rs. [Amount]**
Add : 214 int. ... **Rs. [Amount]**
Total refund ... **Rs. [Amount]**

*Refund is adjusted towards
amount of tax due from the
assessee.*

12400

[Handwritten Signature]

170 : Central Circle, Hyd.

Copy to the [Authority]

(4)

*Original given to
[Name]
on 21/1/56*